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EXAMINER
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
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Ex parte PAUL D. O'BRIEN
and
MARK E. WIEGAND
_____

Appeal 2009-002955
Application 09/043,406
Technology Center 3600
_____

Decided: August 26, 2009
_____

Before: MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and BIBHU
R. MOHANTY, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection

of claims 53 to 57 and 61 to 67. We have jurisdiction under 35 U.S.C.

§ 6(b) (2002).

1   Appellants invented a service provision system for use in distributed

2   processing environments (Spec. 1).

3   Claim 53, illustrative of the subject matter under appeal reads as

4   follows:

5   53. A distributed computer programmed to
6   provide a multi-agent system having a plurality of
7   interoperating agents, each agent comprising:
8   an input for receiving a service request for a
9   composite service;
10   processing means for processing the
11   composite service request;
12   negotiation means for use in establishing
13   conditions applicable to provision, by one or more
14   other agents in said multi-agent system, of one or
15   more component processes involved in provision
16   of the composite service, said negotiation means
17   being adapted to assemble said conditions
18   proactively by negotiation prior to receipt of said
19   composite service request;
20   an up-datable data store;
21   means to access said up-datable data store
22   for storing said conditions when established and
23   assembled; and
24   an output for providing a response to the
25   composite service request, said response
26   comprising an indication of availability of the
27   requested composite service;
28   wherein the processing means is adapted to
29   process a composite service request by accessing
30   one or more of the previously established
31   conditions, for supply of component processes by
32   said one or more other agents, in the data store,
33   processing the request using the one or more
34   established conditions and producing said
35   response.

2

1   The prior art relied upon by the Examiner in rejecting the claims on

2   appeal is:

3   Carr   US 5,608,446   Mar. 4, 1997

4   The Examiner rejected claims 53 to 57, 61 to 64, and 66 to 67

5   under 35 U.S.C. § 102(e) as being anticipated by Carr.

6   The Examiner rejected claim 65 under 35 U.S.C. § 103(a) as being

7   unpatentable over Carr.

8

9   ISSUE

10   Have Appellants shown that the Examiner erred in finding that Carr

11 discloses a composite service request with one or more component processes

12 involved in provision of the composite service?

13

14   FINDINGS OF FACT

15   The Specification teaches that a number of separate services can be

16 combined in providing a single service (Spec. 14). A composite service to

17 "provide a customer quote" would be made up of component services: a

18 legal advice service, a cost and design customers network service, and a vet

19 customer service (Spec. 20; Fig. 6)

20   Carr discloses a method for combining high bandwidth with low

21 bandwidth data transfer (col. 1, ll. 1 to 3). As depicted in Figure 1 the

22 system includes a plurality of enhanced service providers 10A . . . 10N that

23 communicate through a telecommunication network 14 with a split channel

24 bridging unit 18. The split channel bridging unit 18 routes communication

25 through a low bandwidth path through modems 1. . . N to a public switched

26 telephone network 24 to the modem 76 connected to the customer's

1   personal computer 74 and through a high bandwidth path through

2   modulators 46A . . . 46N to a cable distribution head end 30N to a splitter 58

3   and home controller 70 to the personal computer 74 (col. 7, l. 58 to col. 9, l.

4   43). The decision to route the communication through the low bandwidth

5   path or the high bandwidth path is made by a processor 48 within the split

6   channel bridging unit 18 (col. 8, ll. 42 to 47). If the processor 48 determines

7   that the high bandwidth path is needed, the processor 48 determines whether

8   sufficient bandwidth capacity is available for the information to be

9   transmitted through the high bandwidth path (col. 9, ll. 6 to 9). The router

10 routes the information through one of the modulators 46A-46N (col. 4, ll.

11 (col. 4, ll. 3 to 6). The processor 48 controls the operation of the router 42

12 and contains a database that includes the bandwidth of each of the channels

13 28A . . . 28N associated with modulators 46A-46N in order to determine

14 which modulator to use in order to more efficiently route the information

15 (col. 4, ll. 16 to 21; col. 9, ll. 44 to 49). Carr also discloses that the service

16 provider can also make the decision of whether to route the information

17 through the public switched telephone network or through the cable

18 distribution head. To accomplish this aim, the service providers are

19 provided with an ongoing update of the channel 28A. . . 28N availability

20 through modulators 46A . . . 46N (col. 9, ll. 53 to 56). Negotiation is

21 necessary between the split channel bridging unit 18 and the service

22 providers in order to assign and allocate bandwidth (col. 10, ll. 5 to 9).

23   The Examiner states:

24   in Carr, negotiating involves allocating bandwidth,
25   and as shown in Col. 10, lines 31-36, there is a
26   *plurality* of 6 megahertz bandwidth RF channels to
27   be made concurrently available. Therefore the

4

1   request can be allowed based on 6 different
2   bandwidths since users are permitted to receive
3   high-speed signals over the cable television
4   network via one of a selectable number of RF
5   channels, and in order to make an allocation [of]
6   *one out of the plurality of 6 megahertz bandwidths*
7   must be negotiated for each request, which
8   therefore represents being composite.

9 (Ans. 11).

10

11   PRINCIPLES OF LAW

12   A claim is anticipated only if each and every element as set forth in

13 the claim is found, either expressly or inherently described, in a single prior

14 art reference. *Verdegaal Bros. Inc. v. Union Oil Co.*, 814 F.2d 628, 631

15 (Fed. Cir.), *cert. denied*, 484 U.S. 827 (1987).

16   In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the

17 Examiner to establish a factual basis to support the legal conclusion of

18 obviousness. *See In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988).

19

20   ANALYSIS

21   We will not sustain the anticipation rejection of the Examiner because

22 Carr does not disclose a composite service request. The fact that the

23 transmission can occur through one of six channels does not make the

24 request in Carr a composite. As recited in claim 53, a composite request

25 requires that component processes make up the request. A composite

26 request is disclosed as including a legal advice service, a cost and design

27 customers network service, and a vet customer service. As such, the request

28 involves more than one process that are components of the service. This is

29 not disclosed in Carr. Therefore, we will not sustain the rejection of claim

53, or claims 54 to 57 dependent thereon, under 35 U.S.C. § 102(e) as anticipated by Carr. We will also not sustain the rejection of claim 61 and claims 62 to 64, 66, and 67 dependent thereon because claim 61 also discloses a composite request.

We will not sustain the Examiner's rejection of claim 65 under 35 U.S.C. § 103 as being unpatentable over Carr because claim 65 depends from claim 61 and thus requires a composite request. As we stated above, Carr does not disclose a composite request. In addition, Carr does not suggest a composite request.

CONCLUSION OF LAW

On the record before us, Appellants have shown that the Examiner erred in rejecting the claims.

DECISION

The decision of the Examiner is <u>reversed</u>.

<u>REVERSED</u>

hh

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